

**UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF NEW MEXICO**

Second Amended Petition for Revocation of Supervised Release

Name of Offender: Nicholous Phillips
Docket Number: 1084 1:09CR03601-001MV
Assigned Judge: Honorable Martha Vázquez, United States District Judge
Date of Original Sentence: 06/16/2012
Original Offense: 18 U.S.C. 922 (g)(1) and 924 (a)(2): Felon in Possession of a Firearm and Ammunition
Original Sentence: BOP: 60 months; TSR: 2 years
Date Supervision Commenced: 09/05/2018
Date Supervision Expires: 09/04/2020
Other Court Action: 01/15/2019: Report on Offender Under Supervision submitted to the court after the defendant had three positive urine tests for amphetamines on December 1, 17 and 19, 2018. The defendant admitted consuming methamphetamine on two occasions. No court action recommended, and the Court agreed.

06/06/2019: Report on Offender Under Supervision submitted to the court after the defendant had four positive urine tests for amphetamines on May 16, 28, 30 and 31 2019. The defendant admitted to consuming methamphetamine on two occasions. No action recommended, and the Court agreed.

07/17/2019: Petition for Revocation of Supervised Release was submitted to the court after the defendant had four positive urine tests for amphetamines on June 5, 28 and 30, 2019 and July 1, 2019. Laboratory confirmations returned positive for D-Methamphetamine for all tests. Petition was held in abeyance for six (6) months on September 3, 2019.

PETITIONING THE COURT

No warrant requested. Emergency warrant issued.

U.S. Probation Officer of the Court, Amy Gee, alleges the offender has violated the following condition(s) of supervised release.

<i>Violation Type</i>	<i>Nature of Noncompliance</i>
SC	The defendant shall refrain from excessive use of alcohol and shall not purchase, possess, use, distribute, or administer any controlled substance or any paraphernalia related to any controlled substances, except as prescribed by a physician.

On June 28, 2019 a home visit was conducted at the defendant's reported residence. A purple Crown Royal whiskey bag was observed on the center console of a truck parked in the driveway of the residence. The truck was determined to be a rental vehicle the defendant had been driving. During a further search of the truck, numerous syringes were found inside of the Crown Royal whiskey bag. The defendant admitted he used one of the syringes to inject methamphetamine earlier in the day. He reportedly discarded the used syringe.

On November 15, 2019, a home visit was conducted at the defendant's reported residence. The defendant was asked if the undersigned officer could look inside of his vehicle. He unlocked the vehicle and opened the driver's side door. The odor of marijuana was prevalent. A black backpack was observed in the left rear compartment of the vehicle. Inside of the backpack was a Ziplock plastic bag containing marijuana, a Ziplock plastic bag containing a crystal-like substance, a vacuum sealed plastic bag with an unknown substance and orange strips wrapped in plastic. There was a black and silver box that contained a digital scale and numerous plastic bags indicative of drug distribution. The backpack also contained numerous smoking devices and hypodermic needles. All suspected narcotics and paraphernalia were transferred to law enforcement for further investigation.

MC The defendant shall refrain from any unlawful use of a controlled substance.

The defendant submitted drug tests that were positive for amphetamine on June 5, 28 and 30, 2019 and July 1, 2019. Laboratory confirmations returned positive for D-Methamphetamine for the tests submitted on June 5 and 30, 2019 and July 1, 2019. The confirmation is pending for the June 28, 2019 test; however, the defendant did verbally admit to using methamphetamine that same day.

The defendant submitted a drug test that was positive for amphetamine and opiates on October 24, 2019. Laboratory confirmations returned positive for D-Methamphetamine and heroin. The defendant did verbally admit to smoking methamphetamine and heroin on or about October 21, 2019.

MC The defendant shall not possess, or have access to a firearm, ammunition, destructive device, or any other dangerous weapon.

On November 15, 2019, a home visit was conducted at the defendant's reported residence. This officer was given permission by the defendant to look through his vehicle. As this officer looked through the vehicle, he abruptly entered his residence while disregarding other officers' instructions to wait. He subsequently emerged and was observed holding a black handgun. A U.S. Probation Officer heard the defendant say, "I'm not going back," as he pointed the gun to the side of his head. The officers on scene were able to safely retreat. The undersigned officer later made telephone contact with the defendant. He admitted to being in possession of a Glock handgun. Law enforcement responded to further investigate the incident.

MC You must not commit another federal, state, or local crime.

On November 16, 2019, Albuquerque Police Department charged the defendant with Possession of a Controlled Substance in violation of NMSA 30-31-23(A). According to the criminal complaint, the defendant had been arrested on a felony warrant and was transported to the prisoner transport center (PTC). PTC staff located on the defendant's person a bag containing a white substance that tested presumptive positive for methamphetamine. On

November 16, 2019, the criminal complaint was filed in Bernalillo County Metropolitan Court, Case Number T-4-FR-2019-006488.

(Amended)

On November 19, 2019, the Federal Bureau of Alcohol, Tobacco, and Firearms (ATF) charged the defendant with the following offenses: Convicted felon in possession of a firearm and ammunition that has traveled in and affected interstate commerce in violation of 18 U.S.C. 922(g)(1) and 924(a)(2); Possession with intent to distribute a controlled substance (methamphetamine) in violation of 21 U.S.C. 841(a)(1) and (b)(1)(B); and Possession of a firearm during and in relation to and in furtherance of a drug trafficking crime in violation of 18 U.S.C. 924(c)(1)(A)(i). On November 19, 2019, the criminal complaint was filed in the U.S. District Court for the District of New Mexico, Case Number 19-MJ-4161.

According to the criminal complaint, a United States Probation Officer contacted an ATF Special Agent on November 15, 2019, after suspected narcotics, controlled substance-related paraphernalia and assorted packaging and distribution materials were found in a backpack located in the defendant's truck during a home contact. During the contact, the defendant was observed by a Probation Officer pointing a handgun to his head. During a subsequent telephone conversation with the undersigned officer, the defendant admitted he was in possession of a Glock handgun.

The ATF Special Agent obtained a search warrant for the premises of the defendant's residence and vehicle. The warrant was executed on November 16, 2019. During the search of the premises the following items were recovered: a Glock pistol frame, cut or broken into two pieces; two partially destroyed or melted firearm magazines; and twenty-six rounds of .40 S&W caliber ammunition.

The backpack and its contents were turned over by Probation Officers to the ATF Special Agent. According to the criminal complaint, the narcotics included suspected methamphetamine, suspected Lysergic acid diethylamide (LSD), suspected suboxone strips and marijuana.

The maximum statutory penalty: 2 years imprisonment; 3 years supervised release.

The revocation range of imprisonment: 30 to 37 months.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on 11/21/2019.

Submitted:

Approved:

☒ Phone Approval



Amy Gee
U.S. Probation Officer

Jack Burkhead
(505) 346-7274
Assistant U.S. Attorney

Date: 11/27/2019